IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5735 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BALDEVBHAI MANGALBHAI PATEL

Versus

AHMEDABAD JILLA PANCHAYAT

Appearance:

1. Special Civil Application No. 5735 of 2004

MR GM AMIN for Petitioner No. 1-7

MR PRANAV V SHAH for Respondent No. 1

NOTICE NOT RECD BACK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 01/09/2004

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has prayed for

appropriate writ, direction or order directing the respondent to grant Non Agricultural Use permission to the petitioners of their land bearing Survey No.695 /1 i.e Block No.837 situated in village Ghuma, Taluka : Daskroi, District : Ahmedabad.

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#. It is case of the petitioners that they are owners of the land bearing Block No.837, situated in the sim of village Ghuma, Taluka Daskroi, District Ahmedabad and had applied to the respondent District Panchayat, Ahmedabad for grant of non agricultural use permission vide application dated 17th April, 2003. It is case of the petitioners that they have already supplied necessary particulars to the respondent authority which were required and asked for by the authority for the purpose of grant of non agricultural use permission. It is also case of the petitioners that so far as the other persons are concerned, who have made application subsequent to that of the petitioners, non agricultural use permission in their favour is already granted but so far the petitioners are concerned, permission is not granted despite of the fact that they have already supplied all the necessary documents and the particulars which are asked for by the District Development Officer, Ahmedabad. The petitioners are communicated by letter dated 17.4.2004 that as the AUDA has requested the District Development Officer not to grant non agricultural use permission for the lands situated within limits of Bopal and Ghuma villages, and therefore, the proceedings for grant of non agricultural use permission are stayed. By aforesaid communication, the petitioners also informed to produce Village Form -7 /12 with regards to deletion of the entry of having taken loan from Dena Bank on the land in question. Being aggrieved and dissatisfied with the said action, the petitioners have filed the present petition.

#. In response to the notice issued by this Court, the respondent entered appeared and filed affidavit-in-reply on behalf of the District Development Officer, Ahmedabad, in which, it is stated that the petitioners have not produced necessary documents which are asked for by communication dated 17.4.2004 and therefore, non agricultural use permission in favour of the petitioners is not granted and not processed. It is also further submitted that so far as the instances upon which reliance is placed by the petitioners with regards to grant of non agricultural use permission with regard to land bearing Block No.444 is concerned, as the owner of the said land has submitted all the necessary documents

and therefore, non agricultural use permission has been granted. It is also further submitted that even without awaiting for non agricultural use permission, the petitioners have already started construction and there is clear breach of Section 66 of the Bombay Land Revenue Code and hence, the petition deserves to be dismissed.

#. Heard learned advocates appearing for the parties.

#. It is case of the petitioners that the petitioners have already supplied and produced necessary documents before the District Development Officer for the purpose of grant of non agricultural use permission. Still the petitioners will submit all the necessary documents which are asked for vide communication dated 17.4.2004 within a period of two weeks. So far as the alleged instructions given by the AUDA to the District Development Officer as regards not granting any non agricultural use permission with regard to the lands of village Bopal and Ghuma, is concerned as such, nothing is on record. Even though such instruction is there, it cannot be binding on the District Development Officer, Ahmedabad and grant of non agricultural use permission is not depending upon any opinion of the AUDA. Even otherwise, in view of the fact that the very District Development Officer, Ahmedabad has granted non agricultural use permission to the owner of the land bearing Block No.444 situated in village Bopal though their application was subsequent to that of the petitioners' application. The respondent District Development Officer cannot give discriminatory treatment to the petitioners. Under these circumstances, there is no justification on the part of the respondent District Development Officer, Ahmedabad not to grant non agricultural use permission on the basis of the alleged communication from the AUDA not to grant non agricultural use permission with regard to the lands situated at villages Bopal and Ghuma.

So far as the other documents which are asked for by the District Development Officer, Ahmedabad vide communicated dated 17.4.2004 is concerned, the petitioners have shown their willingness to give and / or supply those documents again within a period of two weeks. Under these circumstances, the District Development Officer, Ahmedabad is directed to consider application of the petitioners for grant of Non Agricultural Use permission on being supplied necessary documents which are asked for by him vide communication dated 17.4.2004 within period of six weeks thereafter on merits and if all the documents are supplied and on fulfilling required procedure, the District Development

Officer, Ahmedabad is further directed to grant Non Agricultural Use permission to the petitioners.

Rule is made absolute to the aforesaid extent with no order as to costs.

Date : 1.9.2004 [M.R.Shah, J.]

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